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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,888	06/07/2002	Markus Leuz	10191/2045	6086

26646 7590 02/26/2003

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EXAMINER

TRAN, DIEM T

ART UNIT	PAPER NUMBER
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3748

DATE MAILED: 02/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/030,888	LEUZ ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Diem Tran	3748	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____   |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u> . | 6) <input type="checkbox"/> Other:  |

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## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 8-15 are objected to because of the following informality:

-In claim 8, line 4, "of " should be inserted between "state" and "congestion".

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 8-9, 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Kammel (US Patent 5,097,665).

Regarding claims 8, 16, Kammel discloses a method for controlling an internal combustion engine having an exhaust treatment system that includes a particle filter, comprising the step of simulating a quantity characterizing a state of congestion of the particle filter in accordance with at least one operating parameter of the internal combustion engine (see col. 13, lines 45-64).

Regarding claim 9, Kammel further discloses one operating parameter including a rotational speed (see col. 13, lines 1-10).

Regarding claim 13, Kammel further discloses the step of controlling the exhaust treatment system during a normal operation in accordance with the quantity (see col. 13, lines 60-63, col. 14, lines 10-21).

Regarding claims 14, 15, Kammel further discloses the steps of detecting an error and controlling the exhaust treatment system in accordance with the quantity (see col. 13, lines 5+).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 10, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kammel (US Patent 5,097,665) in view of Mayer (US Patent 4,615,172).

Regarding claims 10, 11, Kammel discloses all the claimed limitations as discussed in claim 9 above, however, fails to disclose the one operating parameter including the oxygen concentration in the exhaust gas. Mayer teaches that it is conventional in the art, to utilize the oxygen concentration to simulate a quantity characterizing a state of congestion of the particle filter (see col. 8, lines 12-25).

It would have been obvious to one having ordinary skill in the art at the time the invention was made, to have utilized an oxygen concentration as taught by Mayer, in

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the Kammel device, since the use thereof would have provided a means to determine the state of clogging of the particle filter.

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kammel (US Patent 5,097,665) in view of Shinzawa et al. (US Patent 5,319,930).

Regarding claim 12, Kammel discloses all the claimed limitations as discussed in claim 8 above, however, fails to disclose one operating parameter including a temperature in the exhaust treatment system. Shinzawa teaches that it is conventional in the art, to utilize the exhaust gas temperature to simulate a quantity characterizing a state of congestion of the particle filter (see col. 3, lines 49-61).

It would have been obvious to one having ordinary skill in the art at the time the invention was made, to have utilized an exhaust gas temperature as taught by Shinzawa, in the Kammel device, since the use thereof would have provided a means to determine the state of clogging of the particle filter.

### ***Conclusion***

Any inquiry concerning this communication from the examiner should be directed to Examiner Diem Tran whose telephone number is (703) 308-6073. The examiner can normally be reached on Monday -Friday from 8:30 a.m.- 5:00p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion, can be reached on (703) 308-2623. The fax number for this group is (703) 308-7763.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.



Diem Tran  
Patent Examiner  
Art unit 3748

DT  
February 19, 2003



THOMAS DENION  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700